Supreme Court, U.S.
FILED
SEP 23 1998
OFFICE OF THE CLERK

(1)

No. 98 849

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1998

pro-se Charles Lucarelli

Petitioner

v.

Henry Taylor American Legion

Hershal W. Gober Veteran Affairs

Respondents

On Petition For Writ Of Certiorari To The

United States Court of Appeals for the Fourth Circuit

PETITION FOR WRIT OF CERTIORI

Counsel of Record, United States Attorney
pro se Charles Lucarelli Petitioner
Route 93, RR-1 - Box 310, B-265
Hazleton, PA 18201
Phone - None

37pp

QUESTION(S) PRESENTED

Did the U.S. District Court and the U.S. Appeals Court of Washington, D.C. error in dismissing Petitioner's Civil Action of April 3, 1997 and appeal of. Because Prior Case was remanded and decision was never given by Veterans Affairs, or by the B.V.A. so that I could have opportunity of an adverse decision or enjoy my rightful benefits.

Appendix A

LIST OF PARTIES

[x] All parties appear in the caption of the case on the cover page.

[ ] All parties do not appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

Note: Leonce Wilson defendant for American Legion was replaced by Henry Taylor prior to November 26, 1997 when I appealed Civil Action No. 97-00661 (PLF).

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TABLE OF AUTHORITIES CITED

CASES PAGE NUMBER

Lucarelli v. Brown No. 96-5049 case used was improper by Defendant's or Appellee's under Res-Judicata. Can't bring back same board claim without new evidence. Refer to Exhibit B under, Statement of Case.

STATUTES AND RULES

Fed.R 12 b 1 No response by defendant for my complaint and summon's in U.S. District Court. Appeals Court allowed the no response by Federal Court. The prior case was never rendered a decision.

OTHER

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1998

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

[X] For cases from federal courts:

The opinion of the United States court of appeals appears at Appendix ___ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[X] is unpublished.

The opinion of the United States district court appears at Appendix ___ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[X] is unpublished.

[ ] For cases from state courts:

The opinion of the highest state court to review the merits appears at Appendix ___ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the United States district court appears at Appendix ___ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

[X] For cases from federal courts:

The date on which the United States Court of Appeals decided my case was April 8, 1998 .

[ ] No petition for rehearing was timely filed in my case.

[X] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: June 11, 1998 , and a copy of the order denying rehearing appears at Appendix A .

[X] An extension of time to file the petition for a writ of certiorari was granted to and including September 25, 1998 (date) on _____ (date) in Application No. A-_____.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Dues process and 6th Amendment Rights

Statutory is Federal rule of Civil procedure 12 bl

Appendix G

STATEMENT OF THE CASE

On April 3, 1997 plaintiff, Charles Lucarelli filed a Civil Action against the Veterans Affairs and American legion for having 2 claims down at same time on a April 15, 1994 Board of Veteran Appeals Document

No. I is the April 3, 1997 Civil Action.

No. II The Defendant claims the Court of Veteran Appeals has exclusive jurisdiction to review claims involving the grant or denial of veterans disability benefits on their September 30, 1997 dismissal by Judge Paul Friedman. No lmention of April 3, 1997 Civil Action.

Exhibit A - A June 18, 1993 correspondence of case history starting with july 15, 1991 Board of Veteran Appeals of denial to the March 24, 1993 court of Veterans Appeals remand back to the Board of Veteran Appeals where it has remained to this day.

Exhibit B - Title 38 regarding; without knew evidence a Board of Veteran Appeals Case, the same clain cannot be brought back without new evidence. "Res-Judicata"

Exhibit C - A document from 1995 stating I have submitted no new evidence from 1990 to present.

Exhibit D - United States Court of Apeals dismissal. Appeals Court states it didn't matter that, defendant, did not respond to complaint and summon's.

Exhibit E - United States Court of Appeals denying petitioner's Petition for Rehearing.

NO. I

R DISTRICT OF
RECEIVED
MAR - 4 1998
CLERK

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CHARLES LUCARELLI
Rt. 93 RR1 Box 310B-265
Hazleton, PA 18201

PLAINTIFF

vs.

CASE NUMBER 1:97CV00661
JUDGE: Paul L. Friedman
DECK TYPE: Pro-Se
DATE STAMP: 04/03/97

JURY ACTION

SECRETARY JESSIE BROWN
Department of Veteran Affairs
810 Vermont Avenue, N.W. Room 1000
Washington. D.C. 20402

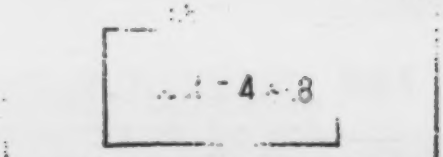
LEONCE WILSON.
American Legion, B.V.A.
1608 K Street, N.W.
Washington, D.C. 20006

DEFENDANTS

I, Charles Lucarelli, am filing a civil suit in federal court against the Veterans Affairs, namely the person in charge, Jessie Brown and the American Legion in Washington, D.C., namely Leonce Wilson also the person in charge for putting down two cases simultaneously on a Board of Veteran Appeals Case dated April 14, 1995 from the Department of Veteran Affairs in Washington, D.C. Plaintiff filed a law suit in March of 1995 in Washington, D.C. A month later plaintiff gets this allegedly willful misdirected letter sent to Virginia while plaintiff was living in Pennsylvania.

My complaint, plaintiff alleges that the above named parties were and are involved in falsifying government documents, a conspiracy of misinformation and fraud. Fraudulently representing the plaintiff and having two claims or cases down on appeal at the same time. Plaintiff only went to the American Legion in 1994 to get his address changed. The American Legion never did any work for me. The American Legion person who works for Leonce Wilson who allegedly represented me is not down on document sent to plaintiff. I had to get her name from the Cortland New York Office. Her name is Barbara Steadman. Why Cortland has her name down on the Cortland documents and not on the one's they sent plaintiff can only lead one to believe that they want to hide something.

NO. I



Under the Board of Veteran Appeals, only one claim can be at issue at a time. If there is another it goes in the suspend file. On March 24, 1993, the Secretary of Veteran Affairs filed a motion for remand in plaintiff's Court of Veteran Appeals case. It was sent back to the Board of Veteran Appeals. When a claim is disallowed by the Board under Title 38, 511B, the claim may not thereafter be reopened and allowed , and a claim based upon the same factual basis may not be considered. Only if new evidence is brought forth. What the V.A, does and did in plaintiff's case is that on January 12, 1994 the Veteran Affairs sent this new evidence form. Plaintiff sent it back. With no new evidence. The V.A., plaintiff alleges, recycled the same B.V.A. claim with it. The point I'm trying to make is that when I, plaintiff filed suit in Washington, D.C. on March, 1995, all through the correspondence the V.A. kept saying my suit belongs first in the Court of Veteran Appeals

On June 24, 1994 plaintiff entitlements were extended from 11-1-87 to 03-01-90 to 100%, then reduced from 100% to 50% after 03-01-90. This was done without due process in court, violating plaintiff's 6th Amendment Right's. I had just come from the court of Veteran Appeal. The V.A. wanted plaintiff to take a B.V.A. case that was denied, disallowed, the same case come back to the court the Secretary, Jessie Brown remanded the court-case to the board. Then the V.A. sends these Additional Evidence Forms, as in January 12, 1994 and allegedly fabricated a new Board of Veteran Appeals case with my signature on it. The most recent is a September 11, 1996 document from Philadelphia, Veteran Affairs stating, your appeal was remanded back to this office by the Board of Veteran Affairs for additional development. When I called these people, they won't tell me what this is about.

In Title 38, 7104(b), except as provided in section 5108 of this title, when a claim is disallowed by the Board, the claim may not thereafter be reopened and allowed, and a claim based upon the same factual basis may not be considered. All plaintiff gets are alleged false documents created by the Veteran Affairs. It is very hard to keep up with all the alleged false documents sent to plaintiff by the Veteran Affairs but also at the same time the unanswered correspondence sent to the veteran Affairs. If Jessie Brown, the Secretary remanded plaintiff's Court of Veteran Affairs case to the Board in March 24, 1993, where's the decision?

In 1994 the Veteran Affairs tried to bring me in for an exam. Another alleged scam to start a bogus claim. Plaintiff refused to go to all four exams sent him. The V.A. had a claim of mine they were supposed to make a decision on. Refusing the exam and having no reduction in plaintiff's benefits at that time proves the exams were a ploy of the V.A. Refusing a V.A. exam is generally an automatic reduction in a veteran's benefit. As was done to plaintiff in March 1990. Here is another example of allegedly creating false documents for the purpose of getting information to start a bogus claim when the true claim in question has not been decided. Also when the Secretary remanded the Court of Veteran Appeals case, plaintiff had in March of 1993 back to the Board, plaintiff never filed any forms, namely no timely notice of disagreement and no VAF-1-9.

NO. I

...R DISTRICT OF ... ...BIA CIRCUIT
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CLERK

If the Secretary did remand the court case four years ago, the Board should have provided plaintiff with a decision by now, violating plaintiff's 6th amendment rights to a speedy trial.

EXHIBIT A

Envelope from Washington, D.C. of two claims.

EXHIBIT B

The two claims itself.

This is a Civil Suit, personal injury to be filed on my behalf for mental stress, pain and suffering, emotional stress and mental anguish. Plaintiff, because of this ordeal by the V.A. has made it difficult for him to sleep, made his blood pressure rise. Plaintiff alleges the V.A. has him stalked and under surveillance, violating plaintiff's 14th amendment right of free travel in the United States, causing annoyance and disruption of plaintiff's life.

These defendants are in my Civil Suit in federal court:

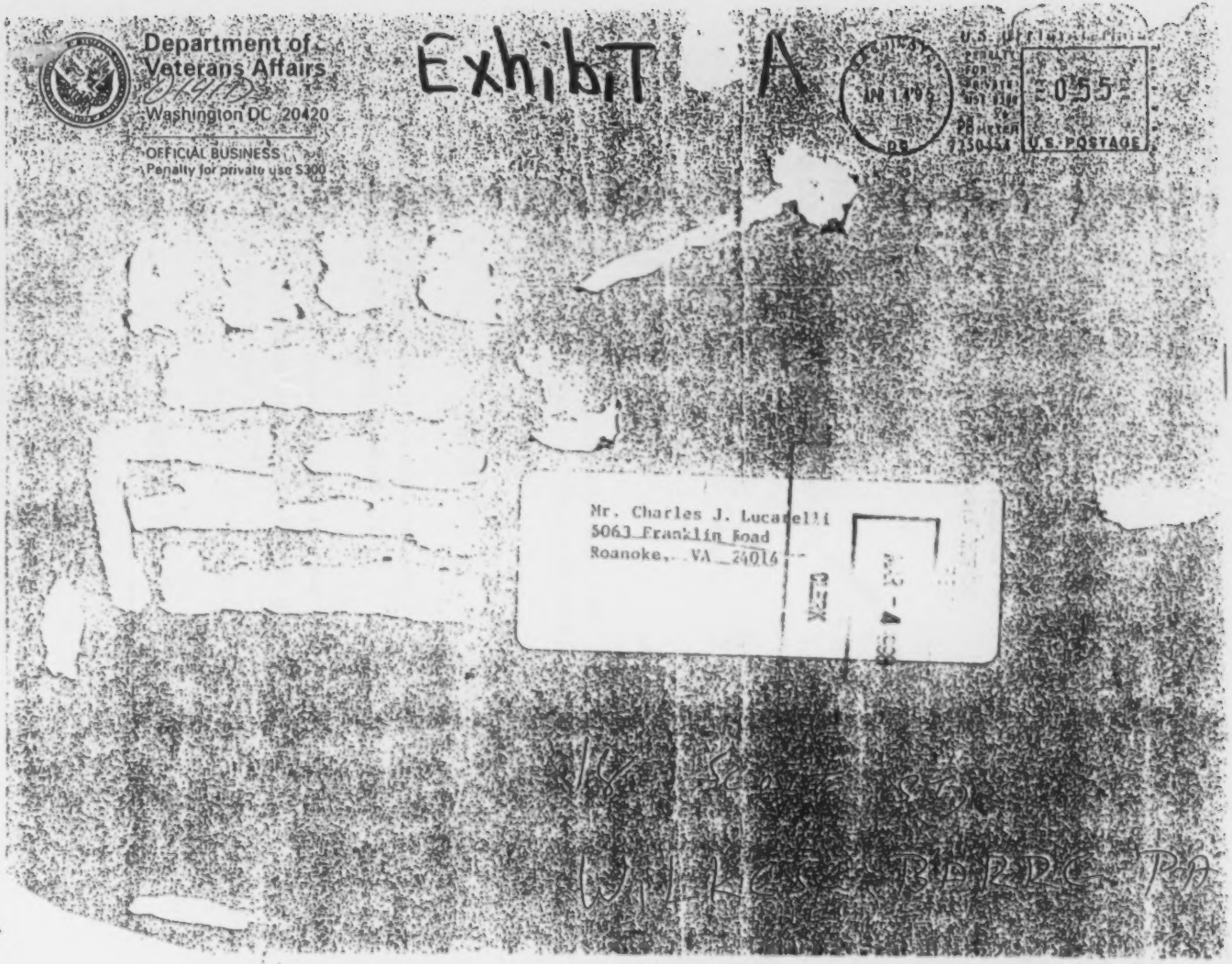
1. Jessie Brown, Secretary of the Veterans Affairs in Washington, D.C.
2. Leonce Wilson, American Legion in Washington, D.C. for having two Board of Appeals cases down on an April 14,1995 B.V.A, claim from Washington.

Wherefore, the premise considered, the plaintiff demands judgment against the defendant in the amount of TWENTY-TWO MILLION DOLLARS. ($22,000,000)

Plaintiff demands trial by jury.

By Charles Lucarelli Pro Se

Charles Lucarelli
Rt 93 RR1 Box 310B-265
Hazleton, PA 18201


Department of Veterans Affairs
Washington DC 20420
OFFICIAL BUSINESS
Penalty for private use $300
Exhibit A
U.S. POSTAGE
055
Mr. Charles J. Lucarelli
5063 Franklin Road
Roanoke, VA 24014

Exhibit

Exhibit. B

BOARD OF VETERANS' APPEALS
DEPARTMENT OF VETERANS AFFAIRS
WASHINGTON, DC 20420

IN THE APPEAL OF
CHARLES J. LUCARELLI

C 24 223 372

DOCKET NO. 91-12 021) DATE APR 14 1995
)
)

On appeal from the decision of the
Department of Veterans Affairs Regional Office in Winston-Salem, North Carolina

THE ISSUE

1. Entitlement to restoration of a 100 percent evaluation for the veteran's service connected schizophrenia beginning on March 1, 1990.

2. Entitlement to waiver of recovery of an overpayment of Department of Veterans Affairs (VA) vocational rehabilitation benefits under Chapter 31, Title 38, United States Code in the amount of $355.20.

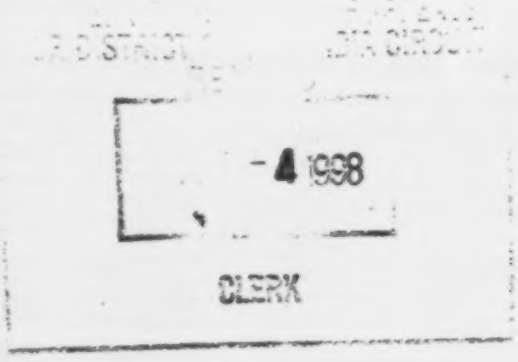
REPRESENTATION

Appellant represented by: The American Legion

WITNESS AT HEARING ON APPEAL

The veteran

Leonce Wilson
American Legion, B.V.A.
1608 K Street, N.W.
Washington, D.C. 20006



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APR 3 11 35 AM '97

N. MAYER-
CLERK
U.S. DIST
DISTRICT O

NO. I

JS 44 (Rev. 12/96)

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I (a) PLAINTIFFS

Charles Lucarelli et al
Rt 93 RR 1 Box 310B-265
Hazleton, PA 18201

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF _____
(EXCEPT IN U.S. PLAINTIFF CASES)

DEFENDANTS (See additional sheet)

Secretary
Department of Veteran Affairs
810 Vermont Ave., N.W. Rm #1000
Washington, D.C. 20420

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT _____
(IN U.S. PLAINTIFF CASES ONLY)
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Representing Myself

ATTORNEYS (IF KNOWN)

Do Not Know

II. BASIS OF JURISDICTION (PLACE AN x IN ONE BOX ONLY)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (For Diversity Cases Only) (PLACE AN x IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

	PTF	DEF		PTF	DEF
Citizen of This State	☒ 1	☐ 1	Incorporated or Principal Place of Business in This State	☐ 4	☐ 4
Citizen of Another State	☐ 2	☒ 2	Incorporated and Principal Place of Business in Another State	☐ 5	☐ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY.)

Civil rights action Title 42 of the U.S. code-sec. 1983; Federal statute prohibits Board of Veteran Appeals having claims at once for same case re. under A.B.A. where one case precludes review out another.

V. NATURE OF SUIT (PLACE AN x IN ONE BOX ONLY)

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
☐ 110 Insurance ☐ 120 Marine ☐ 130 Miller Act ☐ 140 Negotiable Instrument ☐ 150 Recovery of Overpayment & Enforcement of Judgment ☐ 151 Medicare Act ☐ 152 Recovery of Defaulted Student Loans (Excl. Veterans) ☐ 153 Recovery of Overpayment of Veteran's Benefits ☐ 160 Stockholders' Suits ☐ 190 Other Contract ☐ 195 Contract Product Liability	PERSONAL INJURY ☐ 310 Airplane ☐ 315 Airplane Product Liability ☐ 320 Assault, Libel & Slander ☐ 330 Federal Employers' Liability ☐ 340 Marine ☐ 345 Marine Product Liability ☐ 350 Motor Vehicle ☐ 355 Motor Vehicle Product Liability ☐ 360 Other Personal Injury	PERSONAL INJURY ☐ 362 Personal Injury—Med. Malpractice ☐ 365 Personal Injury—Product Liability ☐ 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY ☐ 370 Other Fraud ☐ 371 Truth in Lending ☐ 380 Other Personal Property Damage ☐ 385 Property Damage Product Liability	☐ 610 Agriculture ☐ 620 Other Food & Drug ☐ 625 Drug Related Seizure of Property 21 USC 881 ☐ 630 Liquor Laws ☐ 640 R.R. & Truck ☐ 650 Airline Regs ☐ 660 Occupational Safety/Health ☐ 690 Other	☐ 422 Appeal 28 USC 158 ☐ 423 Withdrawal 28 USC 157 PROPERTY RIGHTS ☐ 820 Copyrights ☐ 830 Patent ☐ 840 Trademark SOCIAL SECURITY ☐ 861 HIA (1395ff) ☐ 862 Black Lung (923) ☐ 863 DIWC/DIWW (405(g)) ☐ 864 SSID Title XVI ☐ 865 RSI (405(g)) FEDERAL TAX SUITS ☐ 870 Taxes (U.S. Plaintiff or Defendant) ☐ 871 IRS—Third Party 26 USC 7609	☐ 400 State Reapportionment ☐ 410 Antitrust ☐ 430 Banks and Banking ☐ 450 Commerce/ICC Rates/etc. ☐ 460 Deportation ☐ 470 Racketeer Influenced and Corrupt Organizations ☐ 810 Selective Service ☐ 850 Securities/Commodities/ Exchange ☐ 875 Customer Challenge 12 USC 3410 ☐ 891 Agricultural Acts ☐ 892 Economic Stabilization Act ☐ 893 Environmental Matters ☐ 894 Energy Allocation Act ☐ 895 Freedom of Information Act ☐ 900 Appeal of Fee Determination Under Equal Access to Justice ☐ 950 Constitutionality of State Statutes ☐ 890 Other Statutory Actions
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	LABOR		
☐ 210 Land Condemnation ☐ 220 Foreclosure ☐ 230 Rent Lease & Ejectment ☐ 240 Torts to Land ☐ 245 Tort Product Liability ☐ 290 All Other Real Property	☐ 441 Voting ☐ 442 Employment ☐ 443 Housing/ Accommodations ☐ 444 Welfare ☒ 440 Other Civil Rights	☐ 510 Motions to Vacate Sentence Habeas Corpus: ☐ 530 General ☐ 535 Death Penalty ☐ 540 Mandamus & Other ☐ 550 Other	☐ 710 Fair Labor Standards Act ☐ 720 Labor/Mgmt. Relations ☐ 730 Labor/Mgmt. Reporting & Disclosure Act ☐ 740 Railway Labor Act ☐ 790 Other Labor Litigation ☐ 791 Empl. Ret. Inc. Security Act		

VI. ORIGIN (PLACE AN x IN ONE BOX ONLY)

☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A ☐ UNDER F.R.C.P. 23 CLASS ACTION DEMAND $ 22 Million Check YES only if demanded in complaint JURY DEMAND: ☒ YES ☐ NO

VIII. RELATED CASE(S) IF ANY (See instructions): JUDGE _____ DOCKET NUMBER _____

DATE

SIGNATURE OF ATTORNEY OF RECORD

No. II

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FILED
SEP 30 1997
Clerk, U.S. District Court
District of Columbia

CHARLES LUCARELLI,

Plaintiff,

v.

HERSHEL W. GOBER, Acting Secretary of Department of Veterans Affairs,

and

LEONCE WILSON,

Defendants.

Civil Action No. 97-0661 (PLF)

ORDER

Plaintiff, Charles Lucarelli, proceeding *pro se*, brought this action, claiming that defendants falsified government documents in relation to the decision of the Court of Veterans Appeals to reduce his entitlement from 100% to 50% after March 1, 1990 thereby violating his due process and Sixth Amendment rights, and that he is entitled to the benefits denied him. Defendant Gober has moved to dismiss the complaint pursuant to Federal Rule of Civil Procedure 12(b)(1) for lack of subject matter jurisdiction over the complaint.[1]

[1] Defendant Leonce Wilson has not filed a motion to dismiss nor has an attorney entered an appearance on his behalf. Furthermore, the Court has no evidence that plaintiff has properly served defendant Wilson with a copy of the summons and complaint pursuant to Rule 4, Fed. R. Civ. P. The Court finds, however, that at the least, the same reasons given here for the dismissal of the action against federal defendant Gober would lead to dismissal of the action against defendant Wilson; therefore, the entire action is dismissed.

This Court has no subject matter jurisdiction to hear this case. Pursuant to 38 U.S.C. § 511(a), the District Court's review of the Veterans Administration benefit determinations are precluded. Claims involving the grant or denial of veterans disability benefits may be appealed to the Court of Veterans Appeals, which has "exclusive jurisdiction" to review decisions rendered by the Board. 38 U.S.C. §§ 7251, 7252(a). From there, decisions can be appealed to the United States Court of Appeals for the Federal Circuit, 38 U.S.C. § 7292, and if denied, a plaintiff may petition the United States Supreme Court for a writ of certiorari to review the Federal Circuit's decision. 38 U.S.C. § 7292(c). Reading plaintiff's complaint liberally, plaintiff's claim is essentially challenging a decision by the Secretary of Veteran Affairs to reduce his benefits, which falls under the "exclusive jurisdiction" of the Board and the Court of Veterans Appeals. See Verner v. United States Government, 804 F. Supp. 381, 384-85 (D.D.C. 1992).

Furthermore, plaintiff filed a similar action in this court in 1995 (Lucarelli v. Brown, Civil Action No. 95-0626), claiming that the failure of the Court of Veterans Appeals to decide whether he is entitled to increased disability benefits had caused him to suffer damages in the amount of twenty five million dollars. On January 25, 1996, Judge Harold Greene dismissed plaintiff's claim for lack of subject matter jurisdiction, articulating the same grounds for dismissal upon which this Court now relies. The dismissal of plaintiff's prior claim was affirmed by the United States Court of Appeals for the District of Columbia Circuit (No. 96-5049) on March 19, 1997.

The Court also lacks subject matter jurisdiction to hear the plaintiff's personal injury tort claim because he has not exhausted his administrative remedies under the Federal

Tort Claims Act. 28 U.S.C. § 2675(a) (1997); McNeil v. United States, 508 U.S. 106, 111 (1993). Accordingly, it is hereby

ORDERED that the motion of defendant Hershel W. Gober, Acting Secretary of Veterans Affairs, to dismiss this action because this Court lacks subject matter jurisdiction is GRANTED; it is

FURTHER ORDERED that the Clerk of the Court shall remove this case from the Court's docket.

SO ORDERED.

Paul L. Friedman

PAUL L. FRIEDMAN
United States District Court Judge

DATE: 9/30/97

EXHIBIT A

Board of Veterans' Appeals
Department of Veterans Affairs
Washington, D.C. 20420

JUN 18 1993

Office of the Chairman

In Reply Refer To: 01C2
C 24 223 372

Mr. Charles Lucarelli
4 Maple Avenue
Canastota, NY 13032

Dear Mr. Lucarelli:

On July 15, 1991, the Board of Veterans' Appeals (BVA) issued a decision which you appealed to the United States Court of Veterans Appeals (Court). You were represented before the BVA by the Disabled American Veterans. You are representing yourself before the Court.

On March 24, 1993, the Court remanded the case to the BVA for another decision, taking into consideration matters raised by the Court in its order. The pleadings filed in this case, including the brief you submitted to the Court, will be made available to the Board Section which will issue a decision in compliance with the Court's order. However, you may submit additional argument if you desire. Such additional argument must be received in this office within 30 days of the date of this letter. Argument received after that date will not be considered. Under the Board's Rules of Practice most communications will and should be sent to your representative. Therefore, you may wish to contact the organization which represents you before the Board regarding the submission of additional argument or for general information regarding the status of your case.

In the event that you do not wish to submit additional argument, please notify me either in writing or by telephone at (202) 233-2978. The case will be held in abeyance for 30 days pending a response, after which it shall be forwarded to the appropriate Section for adjudication.

Sincerely yours,

for Constance B. Tobias
Counsel to the Chairman
By Direction of the Chairman

cc: Mr. James W. Stewart
Disabled American Veterans
810 Vermont Ave., NW
Room 364--LAF
Washington, DC 20420

7104. Jurisdiction of the Board

(a) All questions in a matter which under section 511(a) of this title is subject to decision by he Secretary shall be subject to one review on ppeal to the Secretary. Final decisions on such ppeals shall be made by the Board. Decisions f the Board shall be based on the entire record n the proceeding and upon consideration of all vidence and material of record and applicable rovisions of law and regulation.

(b) Except as provided in section 5108 of this itle, when a claim is disallowed by the Board, he claim may not thereafter be reopened and llowed and a claim based upon the same factul basis may not be considered.

(c) The Board shall be bound in its decisions y the regulations of the Department, instrucions of the Secretary, and the precedent opinons of the chief legal officer of the Departent.

(d) Each decision of the Board shall include—

(1) a written statement of the Board's findings and conclusions, and the reasons or bases for those findings and conclusions, on all material issues of fact and law presented on the record; and

(2) an order granting appropriate relief or denying relief.

questions on claims invoiving benefits under administered by the Veterans' Administration.

Pub. L. 100-687, § 203(a), inserted at end "Th shall decide any such appeal only after affor claimant an opportunity for a hearing. Deci the Board shall be based on the entire reco proceeding and upon consideration of all evide material of record and applicable provisions regulation."

Subsec. (b). Pub. L. 100-687, § 204, amend (b) generally. Prior to amendment, subsec follows: "When a claim is disallowed by the B may not thereafter be reopened and allo claim based upon the same factual basis shall sidered; however, where subsequent to disallo a claim, new and material evidence in the fo cial reports from the proper service depa cured, the Board may authorize the reopening claim and review of the former decision."

Subsecs. (d), (e). Pub. L. 100-687, § 205, add secs. (d) and (e) and struck out former su which read as follows: "The decisions of the shall be in writing and shall contain findings and conclusions of law separately stated."

1961—Subsec. (d). Pub. L. 87-97 added sub

EFFECTIVE DATE OF 1991 AMENDMENT

Section 14(g)(2) of Pub. L. 102-54 provided amendment made by that section is effective 1988.

EXHIBIT B

EXHIBIT C

Department of Veterans Affairs	RATING DECISION		
1.VETERAN'S INITIALS AND SURNAME	2.VETERAN'S SOCIAL SECURITY NUMBER	3.VETERAN'S VA FILE NUMBER	4.DATE OF RATIN
C. J. LUCARELLI	115 36 0255	C 24 223 372	6/14/94

5. NARRATIVE

ISSUE:

Entitlement to an evaluation greater than 50% for service-connected schizophrenia.

EVIDENCE:

VA Form 21-8940 dated February 28, 1994 and March 3, 1994.
Social Security Administration reports received March 17, 1994.

DECISION:

The 100% evaluation for service-connected schizophrenia is restored from December 1, 1980 to February 28, 1990. The 50% evaluation, effective March 1, 1990, is confirmed.

REASONS AND BASES:

The veteran is currently appealing the reduction of his service-connected rating from 70% to 50%, effective March 1, 1990. His claim has been reviewed by the Board of Veterans Appeals who remanded his appeal to the office of original jurisdiction. In support of his claim, the veteran was asked to submit any information or copies of any records he may have relevant to the adjudication or award of disability benefits by the Social Security Administration. The veteran was also asked to submit any copies of recent treatment reports or consent forms to obtain these reports. To date, the veteran has not submitted any of the requested evidence. Additionally, the veteran failed to report for a scheduled routine future examination to determine the current status of his psychiatric disorder.

The veteran's Social Security Administration records were received and reviewed. These reports show that, after originally being denied, he was granted entitlement to disability benefits in April 1985. The primary, and only, diagnosis was paranoid schizophrenia. The veteran's eligibility was reviewed in March 1989. At that time it was determined that his eligibility should continue.

This evidence supports the veteran's contention that he was totally disabled from 1987 to 1990. Therefore, the 100% evaluation for schizophrenia, residual type will be restored from the date of early reduction in November 1987.

EXHIBIT D

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 97-5325 September Term, 1997

97cv00661

Charles Lucarelli,
Appellant

v.

Hershel W. Gober, Secretary, Department of Veteran Affairs and Leonce Wilson, American Legion, B.V.A.,
Appellees

UNITED STATES COURT OF APPEALS
FOR DISTRICT OF COLUMBIA CIRC.
FILED
APR - 8 1998
CLERK

BEFORE: Rogers, Tatel, and Garland, Circuit Judges

ORDER

Upon consideration of the motion for summary affirmance, appellant's motion for summary reversal, and the petition for writ of mandamus, it is

ORDERED that appellee's motion for summary affirmance be granted substantially for the reasons stated by the district court in the order filed September 30, 1997. The merits of the parties' positions are so clear as to warrant summary action. See Taxpayers Watchdog, Inc. v. Stanley, 819 F.2d 294, 297 (D.C. Cir. 1987) (per curiam); Walker v. Washington, 627 F.2d 541, 545 (D.C. Cir.) (per curiam), cert. denied, 449 U.S. 994 (1980). While appellant has offered evidence that the complaint was served on defendant Wilson, the action against both defendants was properly dismissed for lack of subject matter jurisdiction even without Wilson's appearance in the case. See 38 U.S.C. §§ 511, 7252 & 7297 (Court of Veterans Appeals has exclusive jurisdiction to review claims involving the grant or denial of veterans disability benefits, and from there, decisions may be appealed to the United States Court of Appeals for the Federal Circuit); Lucarelli v. Brown, No. 96-5049 (D.C. Cir. Jan. 15, 1997). It is

FURTHER ORDERED that the motion for summary reversal be denied. It is

FURTHER ORDERED that the petition for writ of mandamus be denied. Appellant may not resort to mandamus as a substitute for a direct appeal. See Donnelly v. Parker, 486 F.2d 402, 405-06 (D.C. Cir. 1973).

Exhibit D

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 97-5325 **September Term, 1997**

The Clerk is directed to withhold issuance of the mandate herein until seven days after disposition of any timely petition for rehearing. See D.C. Cir. Rule 41.

Per Curiam

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 97-5325

September Term, 1997

97cv00661

Charles Lucarelli,
Appellant

v.

Hershel W. Gober, Secretary, Department of Veteran Affairs and Leonce Wilson, American Legion, B.V.A.,
Appellees

UNITED STATES COURT OF APPEALS
FOR DISTRICT OF COLUMBIA CIRCUIT
FILED
MAY 27 1998
CLERK

BEFORE: Rogers, Tatel and Garland, Circuit Judges

ORDER

Upon consideration of appellant's petition for rehearing filed April 20, 1998, it is

ORDERED that the petition be denied.

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk

BY: Robert A Bonner
Robert A. Bonner
Deputy Clerk

Exhibit E

REASONS FOR GRANTING THE PETITION

Violation of my due process and 6th amendment rights. There was no mention of my April 3, 1997 civil action for 2 claims down on April 14, 1995 B.V.A. documents by the Federal Court in Washington, D.C. dismissed of September 30, 1997.

The courts and U.S. Attorneys fraudulent concealment of Petitioners Civil Action is a Federal Offense. The U.S. Court of Appeals dismissed my appeal for same reasons as the District Court had.

On April 3, 1997 Civil Action, defendant for American legion never responded to complaint and summon's.

CONCLUSION

The reasons the writ should be issued is that the Judge and Court violated Plaintiff's due process - alleged fraudulent concealment of Civ. No. 96-0661. Also allowing one defendant, American Legion of B.V.A. in Washington, D.C. to not respond to complaint and summons. Then dismissing Plaintiff's Civil Suit abruptly.

Respectfully submitted,

Charles Lucarelli

pro se Charles Lucarelli
Route 93, RR-1 - Box 310, B-265
Hazleton, PA 18201